

Docket: AM-8811
August 13, 2008 (8:07am)

3600.8811

REMARKS

Claims 1-35 and 37 remain in the application.

Applicants disagree with the statement that the response dated April 27, 2008 is not fully responsive. The grounds for declaring a response non-responsive is found in 37 CFR 1.135(c). To be considered non-responsive, the response must be a *bona fide* attempt to advance the application but consideration of some matter or compliance with some requirement has been inadvertently omitted. Applicants' response of April 27, 2008 complied with the requirement of identifying the claim encompassing the elected species. The examiner may disagree with the identification but the identification was made. A responsive or complete response does not require that the examiner is persuaded by every position that the Applicant asserts in the response. Applicant must be able to assert his position so that a proper appeal or petition of the disagreement can be made.

Applicants elected species 1 of FIGS. 4-7 and continue to so elect. Applicants stated in the prior response that claims 1-5, 7-12, and 14-36 encompass the elected species. The Examiner concludes that claims 7 and 14-23 do not encompass the elected species.

Applicant agrees that claim 7 does not encompass the elected species. This erroneous identification is obvious since its parent claim 6 was not stated to encompass the elected species. Claim 7 is now labeled as withdrawn.

However, Applicants continue to assert that claims 14-23 encompass the elected species of FIGS. 4-7. The examiner points to the claimed third wall having a fifth diameter. The first can of claim 14 reads on male can 72; the second can, on female can 74. The second sidewall reads on sidewall 84. The third sidewall reads on the tubular lip 86. Accordingly, claim 14 reads upon the elected species. It is not believed that restrictions of dependent claims 15-23 remove these claims from the elected species.

Applicants now believe that claims 1-5, 8-12, and 14-36 encompass the elected species.

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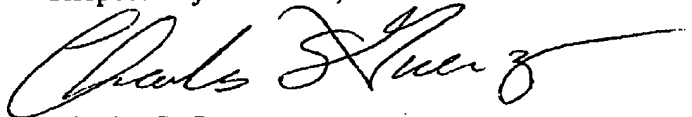
The traversal of the restriction requirement stated in the prior response is maintained. In particular, the production claims 33-35 incorporate each and every limitation of the elected product claim 14. Claim 14 has been amended to further emphasize the complete incorporation of claim 14 including its title. The examiner's cite to MPEP §805.05(e) is misplaced. This section refers to "[p]rocess and apparatus for its practice". The claimed process is the process of making the claimed product not the apparatus upon which the process is practice. The correct section is MPEP §806.05(f) for process of making and product. But, contrary to this section, the claimed process can cannot be used to make another materially different product since the claimed process requires the details of the claimed product and cannot be used to make any other product and still be covered by the claim.

An obvious typographical error has been corrected in claim 29.

In view of the above amendments and remarks, consideration and allowance of all claims are respectfully requested. If the Examiner believes that a telephone interview would be helpful, he is invited to contact the undersigned attorney at the listed telephone number, which is on California time.

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Respectfully submitted,


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